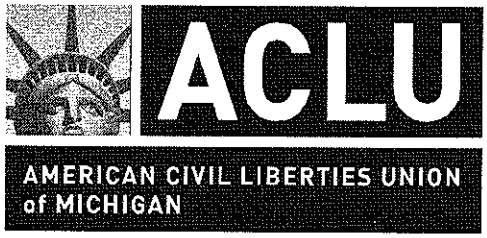

Testimony – HB 6184
Senate Committee on Reforms, Restructuring and Reinventing

June 13, 2012

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The ACLU of Michigan opposes SB 704 due to several constitutional concerns outlined below.

First, where the proposed legislation would require the court to grant injunctive relief without regard to a showing of irreparable harm [in both subsections (2) and (5)], it violates the Michigan constitution's requirement of separation of powers. The Michigan judiciary alone has the authority to determine whether to issue injunctive relief. The Michigan Supreme Court has recently held that a court must always find irreparable harm in order to exercise its equitable powers. See, e.g., Mich Coalition of State Employee Unions v Civil Service Comm, 465 Mich 212 (2001); Detroit Fire Fighters Assn v City of Detroit, 482 Mich 18 (2008).

Second, and exacerbating the first defect, the proposed legislation would prohibit "picketing" [subsection (5)] and allow an employer to obtain injunctive relief without a showing of irreparable harm. Picketing in and of itself has been recognized as First Amendment expression in a labor dispute for several decades. Thornhill v Alabama, 310 US 88 (1940). So this direct and coercive restraint on First Amendment expression would be patently unconstitutional.

Third, the proposed restriction on picketing would also create a conflict between state and federal law under the Supremacy Clause, as the National Labor Relations Act generally permits picketing but regulates it for any impermissible aspects or effects. See, e.g., Section 8(b)(7) of the NLRA. This is referred to as "Garmon" preemption based upon the case of Building Trades Council v Garmon, 359 US 236 (1959), where the Supreme Court struck down a damages award under California tort law which was based on peaceful picketing -- which the NLRA regulated.